

**32B-3-307 Hearing on formal objections to renewal.**

- (1) Upon receipt of a formal objection that meets the requirements of Section 32B-3-306, the department shall:
  - (a) issue a notice of agency action; and
  - (b) serve on the retail licensee no later than 30 days before the expiration of the retail licensee's license:
    - (i) the notice of agency action; and
    - (ii) a copy of the formal objection.
- (2)
  - (a) A retail licensee against whom a notice of agency action is served under Subsection (1) may request a hearing.
  - (b) The request for hearing described in Subsection (2)(a) shall be:
    - (i) in writing; and
    - (ii) filed with the commission within 10 days of the day on which the notice of agency action is served on the retail licensee.
  - (c) If a retail licensee fails to file a request for hearing in accordance with this Subsection (2), the commission may not renew the license of the retail licensee.
- (3)
  - (a) Upon receipt of a request for hearing meeting the requirements of Subsection (2), the department shall immediately schedule a hearing that shall be:
    - (i) held no later than 10 days before the expiration date of the retail licensee's license; and
    - (ii) electronically recorded by the department.
  - (b) The retail licensee or an objecting governmental entity, at its own expense, may have a reporter approved by the department prepare a transcript from the department's record of the hearing.
  - (c)
    - (i) The department shall present information at the hearing that supports a finding that a nuisance activity occurred.
    - (ii) The information described in Subsection (3)(c)(i) shall be made a part of the record of the hearing.
  - (d) A retail licensee shall:
    - (i) have the opportunity to challenge or explain whether any of the nuisance activity that forms the basis for the formal objection occurred; and
    - (ii) be permitted to:
      - (A) testify;
      - (B) present evidence; and
      - (C) comment on the issues at the hearing.
- (4)
  - (a) A hearing held under this part shall be conducted under the authority of the commission.
  - (b) The commission is responsible for rendering a final order on whether a retail licensee's license shall be renewed.
  - (c) Notwithstanding Subsections (4)(a) and (b), the commission may appoint a necessary hearing examiner to administer the hearing process.
  - (d) The commission or the hearing examiner appointed by the commission shall serve as the presiding officer at a hearing held under this section.
  - (e) The presiding officer at a hearing held under this section:
    - (i) shall evaluate:
      - (A) the information presented at the hearing in support of the formal objection; and

- (B) any explanation and evidence offered by the retail licensee; and
- (ii) may consider such factors as:
  - (A) the length of time the retail licensee has operated the licensed premises;
  - (B) the condition of the licensed premises;
  - (C) whether the retail licensee knew or should have known of the nuisance activity in question;
  - (D) whether the retail licensee failed to:
    - (I) make a substantial effort to correct the nuisance activity; and
    - (II) work with law enforcement to curtail the nuisance activity;
  - (E) whether the nuisance activity has been ongoing or temporary;
  - (F) whether the retail licensee or the retail licensee's staff:
    - (I) initiated contact with the law enforcement agency on the nuisance activity; and
    - (II) cooperated with the law enforcement agency's investigation; and
  - (G) whether prior efforts to stop the nuisance activity by the community or the retail licensee have been unsuccessful.
- (5) An order issued under this section shall:
  - (a) be based on the evidence presented at the hearing; and
  - (b) state whether:
    - (i) the continued operation of the licensed premises will endanger the public health, peace, safety, welfare, or morals of the community; and
    - (ii) the retail license should or should not be renewed.
- (6)
  - (a) If the presiding officer is a hearing examiner appointed by the commission, the hearing officer shall issue a signed order in writing that:
    - (i) complies with Subsection (5);
    - (ii) recommends to the commission whether the retail license should or should not be renewed;
    - (iii) states the reasons for the hearing officer's decision; and
    - (iv) notifies the retail licensee and the objecting governmental entity that the hearing examiner's order will be considered by the commission at the next regularly scheduled meeting of the commission.
  - (b) The department shall promptly mail a copy of the hearing examiner's order to:
    - (i) the retail licensee; and
    - (ii) any objecting governmental entity.
  - (c) The commission at its next regularly scheduled meeting after receipt of a hearing examiner's order, shall decide whether to renew or not renew the retail license on the basis of:
    - (i) the record and evidence presented at the hearing; and
    - (ii) the hearing examiner's recommendation.
- (7)
  - (a) As an alternative to ordering that a retail license not be renewed under this section, the commission may conditionally renew a retail license by requiring that:
    - (i) the retail licensee and the licensed premises be closely monitored during the licensing year by:
      - (A) the department;
      - (B) local government officials; and
      - (C) law enforcement; and
    - (ii) the matter be reviewed before the next renewal period.
  - (b) The commission may conditionally renew a retail license contingent on a person listed in Subsection (7)(b)(ii) divesting all interest in the retail licensed business if:

- (i) the retail licensee is a partnership, corporation, or limited liability company; and
  - (ii) the formal objection filed under this section is filed solely on the basis of a felony conviction:
    - (A) of:
      - (I) a partner;
      - (II) a managing agent;
      - (III) a manager;
      - (IV) an officer;
      - (V) a director;
      - (VI) a stockholder who holds at least 20% of the total issued and outstanding stock of a corporate licensee; or
      - (VII) a member who owns at least 20% of a limited liability company licensee; and
    - (B) for illegal activity that occurred off of the licensed premises.
- (8)
- (a) In accordance with this section, the commission shall issue a written order setting forth the commission's decision and the reason for the commission's decision.
  - (b) The order described in Subsection (8)(a) is considered final on the date the order becomes effective.
  - (c) The department shall serve a copy of the order on the retail licensee.
- (9) A retail licensee whose retail license is not renewed by order of the commission may seek judicial review under the procedures provided in Section 32B-3-207.
- (10) A retail licensee whose retail license is not renewed may not reapply for a license under this title for three years from the date the retail license is not renewed.

Amended by Chapter 307, 2011 General Session